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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
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11 BARRY ROSEN,

12 Plaintiff,

13 v.

14 MICHAEL “MIKE” MEDLIN dba

15 AFFORDABLE AUTOGRAPHS;

16 AFFORDABLE AUTOGRAPHS

17 HOLLYWOOD; HOLLYWOOD SHOW,

18 LLC; AND DOES 1-10,

19 Defendants.  
20

Case No. 2:15-cv-05789-ODW-JC

**ORDER GRANTING MOTION TO  
SET ASIDE ENTRY OF DEFAULT  
[35]**

21  
22 Defendant Michael Medlin moves to set aside a default entered against him  
23 under Federal Rule of Civil Procedure 55(c). (ECF No. 35.) Plaintiff Barry Rosen  
24 argues the motion should be denied because (1) Defendant failed to meet and confer  
25 prior to the filing of his motion; (2) Defendant was under the jurisdiction of the Court  
26 having answered the Original Complaint; and (3) Defendant’s continuous violations  
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28

1 of Federal Rules of Civil Procedure is a burden on the Court. (ECF No. 38.) For the  
 2 following reasons, the Court **GRANTS** Defendant's motion.<sup>1</sup>

### 3 **I. FACUTAL BACKGROUND**

4 This action concerns copyright issues within the autograph dealing industry.  
 5 Defendant obtains autographs of celebrities on photographs he prints off the internet  
 6 and subsequently sells them for profit. (First Am. Compl. ¶ 5.)

7 On July 20, 2015, Plaintiff filed his original Complaint. (ECF No. 1.) The  
 8 Summons and Complaint were personally served on Defendant at 5400 W. Century  
 9 Blvd., Los Angeles, California on August 3, 2015. (ECF No. 8.) Defendant,  
 10 appearing pro se, filed his Answer to the Original Complaint on September 2, 2015.  
 11 (ECF No. 23.) On September 10, 2015, Plaintiff filed his First Amended Complaint  
 12 ("FAC"). (ECF No. 25.) The FAC was served on Defendant by first class U.S. mail  
 13 at 5936 Carlton Way, No. 11, Hollywood, California, which is the address listed on  
 14 Defendant's previously-filed Answer. (ECF Nos. 23, 26.) Defendant failed to answer  
 15 the FAC, and on October 8, 2015, the Clerk entered a default against the Defendant.  
 16 (ECF No. 33.) Defendant now moves to set aside the default, claiming he never  
 17 received the FAC. (ECF No. 35.)

### 18 **II. LEGAL STANDARD**

19 Federal Rule of Civil Procedure 55(c) authorizes a court to "set aside the entry  
 20 of default" for "good cause shown." Fed. R. Civ. P. 55(c). District courts look at  
 21 three factors when deciding whether to set aside a default: "(1) whether the plaintiff  
 22 will be prejudiced, (2) whether the defendant has a meritorious defense, and (3)  
 23 whether culpable conduct of the defendant led to the default." *Brandt v. Am. Bankers*  
 24 *Ins. Co. of Fla.*, 653 F.3d 1108, 1111 (9th Cir. 2011) (quoting *Falk v. Allen*, 739 F.2d  
 25 461, 463 (9th Cir. 1984)). "Where timely relief is sought from a default . . . doubt, if  
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 28 <sup>1</sup> After carefully considered the papers filed in support of and in opposition to the Motion, the Court  
 deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 any, should be resolved in favor of the motion to set aside the [default] so that cases  
 2 may be decided on their merits.” *Mendoza v. Wright Vineyards Mgmt.*, 783 F.2d 941,  
 3 945–46 (9th Cir. 1986) (internal quotation marks omitted).

### 4 III. DISCUSSION

5 The first factor from *Brandt* requires the Court to consider whether Plaintiff  
 6 will be prejudiced if the entry of default is set aside. *See Brandt*, 653 F.3d at 1111.  
 7 “To be prejudicial, the setting aside of a judgment must result in greater harm than  
 8 simply delaying resolution of the case.” *TCI Group Life Ins. Plan v. Knoebber*, 244  
 9 F.3d 691, 700 (9th Cir. 2001), *overruled on other grounds by Egelhoff v. Egelhoff ex*  
 10 *rel. Breiner*, 532 U.S. 141 (2001). A two-month delay in this matter is not  
 11 inconsequential, and the Court is sensitive to Plaintiff’s interest in a speedy resolution.  
 12 However, there is no indication that Plaintiff will suffer any harm greater than this  
 13 delay, and it appears that Defendant is now prepared to diligently litigate this matter.  
 14 This factor weighs in favor of Defendant.

15 The second factor requires the Court to consider whether Defendant has a  
 16 meritorious defense to this action. *See Brandt*, 653 F.3d at 1111. A defendant  
 17 seeking to set aside an entry of default must present specific facts that would  
 18 constitute a defense. *See TCI Group Life*, 244 F.3d at 700. Defendant’s only possible  
 19 “meritorious defense” is that he printed the images from the internet, which he argues  
 20 is a public domain, and that the images lacked any kind of watermark. (ECF No. 36.)  
 21 Notwithstanding the lack of a declaration, Defendant fails to allege any “*specific*”  
 22 facts to suggest this is a meritorious fair use defense. *See id.*

23 However, Defendant is appearing pro se. When a party appears pro se, the  
 24 Court construes the pleadings liberally and affords them the benefit of any doubt. *See*  
 25 *Bernhardt v. Los Angeles Cnty.*, 339 F.3d 920, 925 (9th Cir. 2003) (“Courts have a  
 26 duty to construe pro se pleadings liberally.”). This allowance does not mean,  
 27 however, that a pro se defendant is “excused from knowing the most basic pleading  
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1 requirements.” *Am. Ass’n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104,  
2 1107 (9th Cir. 2000). But even construing the pleadings liberally, this factor still  
3 weighs slightly in favor of Plaintiff due to the relative weakness of Defendant’s  
4 defense.

5 The final factor requires the Court to determine whether Defendant’s culpability  
6 led to the entry of default. *See Brandt*, 653 F.3d at 1111. “[A] defendant’s conduct is  
7 culpable if he has received actual or constructive notice of the filing of the action and  
8 intentionally failed to answer.” *TCI Group Life*, 244 F.3d at 697. In this context, the  
9 term “intentionally” does not just mean making a conscious choice not to answer;  
10 rather, the movant must have acted with bad faith, such as an “intention to take  
11 advantage of the opposing party, interfere with judicial decision making, or otherwise  
12 manipulate the legal process.” *Id.*

13 Defendant claims to not have received Plaintiff’s FAC. (ECF No. 35.)  
14 However, Defendant does not assert that the proof of service of the FAC was  
15 somehow defective or listed an incorrect address for service of process. To the  
16 contrary, the FAC was served on the exact address listed on Defendant’s Answer to  
17 the Original Complaint: 5936 Carlton Way, No. 11, Hollywood, California. (ECF  
18 Nos. 23, 26.) Whether Defendant received the FAC or not, he was already on notice  
19 that that the action had been filed against him, and a responsible party would have  
20 done their due diligence from that point on to discover when a responsive pleading  
21 was required.  
22

23 However, nothing in Defendant’s conduct suggests the bad faith necessary to  
24 find that he intentionally failed to answer the FAC. There is no evidence that  
25 Defendant intended to take advantage of the opposing party or manipulate the legal  
26 process. Instead, the facts demonstrate that Defendant either never received the FAC  
27 or that he was ignorant of the law and did not understand his obligation to respond to  
28 an amended complaint. Taking into account of all relevant circumstances surrounding

1 the party's omission, the Court finds that Defendant's conduct was not culpable. As  
2 such, this factor weighs in favor of Defendant.

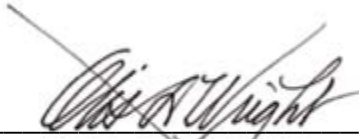
3 In light of the strong preference for resolution of issues on the merits, the  
4 diligent response of Defendant in moving promptly to set aside default, the absence of  
5 prejudice to Plaintiff, and the lack of bad faith on the part of Defendant, the Court is  
6 inclined to grant Defendant's motion to set aside entry of default.

7 **IV. CONCLUSION**

8 In light of the foregoing, the Court **GRANTS** Defendant's motion to set aside  
9 entry of default. Defendant Michael Medlin shall respond to the First Amended  
10 Complaint within fourteen days of this Order.

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12 **IT IS SO ORDERED.**

13 December 22, 2015

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17 **OTIS D. WRIGHT, II**  
18 **UNITED STATES DISTRICT JUDGE**  
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